

NOVEMBER 30, 2003

~~NOVEMBER 30, 2001~~

~~NOVEMBER 30, 2000~~

CONTRACT PERIOD THROUGH ~~NOVEMBER 30, 1999~~

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ARBITRAGE CALCULATION SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by the Board of Supervisors on **OCTOBER 19, 1998**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

~~KD DD/sl lc~~
Attach

Copy to: Clerk of the Board
~~Steve Ellis, Materials Management, MMC~~
~~Victoria Taylor~~ **Shelby Scharbach**, Finance
Monica Mendoza, Materials Management

(Please remove Serial 95149-RFP from your contract notebooks)

SPECIFICATIONS ON REQUEST FOR PROPOSALS: ARBITRAGE CALCULATION SERVICES**1.0 INTRODUCTION:****1.1 PURPOSE:**

The purpose of this document is to define the general requirements of and to solicit proposals for Arbitrage Calculation for the County's bonds and/or certificate of participation issues and described in 2.1 below.

1.2 SCOPE:

This document defines the basic services required, the proposal procedures and the evaluation and award criteria, and other factors pertinent to this proposal.

The proposer shall furnish all labor, materials, and equipment (including data processing equipment) necessary to perform the work required.

1.3 OBJECTIVES:

It is the intent of the County to procure the services of a qualified firm to represent the County as for the project described in 2.0 below.

1.4 TERMS:

The term of the contract shall become effective upon acceptance by the Board of Supervisors and shall be in effect for a period of one year from the date of the award.

2.0 GENERAL SPECIFICATIONS:

2.1 Maricopa County has several bonds and/or certificate of participation issues outstanding which are subject to the arbitrage rebate requirements contained in section 148 (f) of the Internal Revenue Code of 1986 (the "Rebate Requirements"). New issues will be added, as calculations are needed. The issues include:

1. Series 1993A \$10,640,000 - Stadium District Revenue Bonds
2. Series 1992 \$67,500,000 - Maricopa County General Obligation Refunding Bonds
3. Series 1993 \$22,250,000 - Maricopa County General Obligation Refunding Bonds
4. Series 1993D \$25,575,000 - Maricopa County General Obligation Bonds
5. Series 1994A \$ 9,220,000 - Maricopa County General Obligation Refunding Bonds
6. Series 1994 \$30,000,000 - Maricopa County Certificates of Participation
7. Series 1995 \$17,320,000 - Maricopa County General Obligation Refunding Bonds
8. Series 1997 \$10,000,000 – Stadium District Revenue Bonds Second Subordinate

All issues have been sold at fixed interest rates.

The County may elect to contract for some or all of the available services. To facilitate the County's selection process, please provide your quote on a per issue, per services and/or all-inclusive basis.

2.2 Under this agreement, the consultant is to:

1. Calculate the bond yield.
2. Identify and separately account for all "Gross Proceeds" (as that term is defined in the Rebate Requirement) of the bond issue, including those requiring allocation analyses due to "transferred proceeds" and/or "commingled funds" circumstances.
3. Calculate the issue's excess investment earnings (cumulative rebate liability).
4. Deliver appropriate documentation required to support calculations.
5. Provide an executive summary identifying the methodology employed, major assumptions, conclusions, and any recommendations for changes in the County's record keeping and investment policy.
6. Assist the County as necessary in the event of an IRS inquiry.
7. Consult with County staff as necessary regarding arbitrage related matters.
8. Provide assistance and consultation as necessary to retain records and documentation at least six years after the issue's final maturity.

2.0 GENERAL SPECIFICATIONS: (Continued)

9. Provide a legal opinion that arbitrage calculation results are consistent with the Rebate Requirements or an explanation as to why such opinion is unnecessary.

2.3 REQUIRED INFORMATION

1. Describe your firm's experience in providing arbitrage rebate compliance services. Include at least two examples of work performed at the branch office, which will have primary responsibility for this engagement. These examples should reflect currently applicable laws, rules and regulations.
2. Provide a brief explanation of circumstances requiring methodological discretion and your recommended approach to addressing such circumstances. Examples might include allocation of commingled funds, identifying and advising on optional elections available to the County, and utilizing market versus present value for identifying fund balances.
3. Designate the individual(s) who will be working on day-to-day activities with County staff. Provide a brief description of their experience, office location, and accessibility. Provide the names and contact person(s) for at least three agencies for which your firm has provided arbitrage rebate compliance services.
4. Describe in detail the efforts your firm will undertake to satisfy the requirements of the "Services to be Provided" section. Indicate if any additional tasks are necessary and/or advisable.
5. Describe in detail the information and assistance you will require from County staff. Include your needs for bond issuance and investment information, and any special reporting formats that may be required.
6. Describe the legal expertise available within or to you firm, particularly with regard to the provisions of Section 148(f) of the Internal Revenue Code and Regulations promulgated thereunder. Describe the assurance you can provide the County that work performed is consistent with federal tax and other applicable laws. Explain whether the necessary legal advice will be provided within you firm or by a subcontractor. Describe any legal opinions that may be required to satisfy each arbitrage calculation.

NOTE: If the requisite legal expertise is available within your firm, describe your firm's expertise with the relevant provisions of the Internal Revenue Code and applicable rules and regulations. If the legal advice is to be provided outside your firm, identify the source of this expertise and explain the source's knowledge of the relevant Code and Regulation sections. Explain any mark-ups you will add to the cost of outside legal advice. Provide an estimate of the scope and cost of legal advice, including estimated hours and fee rates.

7. Describe your firm's availability with respect to future and/or additional rebate compliance services, i.e., new bond issues subject to the rebate requirement.
8. Describe your firm's fee schedule. Indicate estimated time and total cost for each defined task listed under the "Services to be Provided" section. Provide estimates of other expenses exclusive of fee schedules. Identify follow-up consultation and services available after completion of the arbitrage calculation, and the costs thereof. Provide estimates of costs for both annual calculations and five-year reporting, on a per issue, per service and/or all-inclusive basis.
9. Describe your firm's fee schedule, on a per issue basis, for future bond issues, including the length of time you would honor such schedule.
10. How would you purpose to handle and bill for amending your calculations if new regulations require amending previous calculations?

3.0 ADMINISTRATIVE INFORMATION:

3.0 ADMINISTRATIVE INFORMATION: (Continued)

3.1 SCHEDULE OF EVENTS:

Request for Proposals Issued: August 26, 1998

Deadline for submission of proposals, 3:00 P.M., MST on September 9, 1998. All proposals must be received before 2:00 P.M. on above date at Maricopa County Materials Management Department, 320 West Lincoln, Phoenix, Arizona 85003.

Proposed review of proposals: September 10 - 11, 1998

Proposed vendor presentations: September 1998

Proposed selection and negotiation: September 1998

Proposed Best & Final (if required) September 1998

Proposed award of proposal: October 1998

All responses to this proposal become the property of Maricopa County and (other than pricing) will be held confidential, to the extent permissible by law. The County will not be held accountable if material from proposal responses is obtained without the written consent of the proposer by parties other than the County.

3.2 INQUIRIES:

All inquiries concerning information contained herein shall be addressed to:

MARICOPA COUNTY
DEPARTMENT OF MATERIALS MANAGEMENT
ATTN: CONTRACT ADMINISTRATION
320 WEST LINCOLN
PHOENIX AZ 85003

Administrative telephone inquiries shall be addressed to:

~~LYNN LEMMERMAN~~ **DORENE DOOLEY**, LEAD PROCUREMENT ~~SPECIALIST~~ **CONSULTANT**
- (602) 506-~~3169~~ **8020**

Technical Telephone inquiries shall be addressed to: ~~VICTORIA TAYLOR~~ **SHELBY SCHARBACH**, MANAGER OF FINANCE 506-1367

Inquiries may be submitted by telephone but must be followed up in writing. No oral communication is binding on Maricopa County.

3.3 CHANGE ORDERS:

Maricopa County may institute changes or modifications to the specifications and will notify all participants by an addendum to this Request for Proposal.

3.4 NON-COLLUSION:

The Contractor expressly warrants and certifies that neither the Contractor nor its employees or associates has directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in conjunction with this bid.

3.5 COVENANT AGAINST CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach of violation of this warranty, the County shall have the right to terminate this Agreement in accordance with the termination clause, and at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission,

percentage, brokerage, or contingent fee.

3.0 ADMINISTRATIVE INFORMATION: (Continued)

3.6 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or consultant to any other party of the contract with respect to the subject matter of the contract. Additionally, pursuant to A.R.S. § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the contract.

3.7 FINANCIAL STATUS:

All vendors shall make available upon request a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of the request by the County shall be sufficient grounds for the County to reject a bid or proposal, and/or to declare a vendor non-responsive and/or non-responsible, as those terms are defined in the Maricopa County Procurement Code.

3.7 FINANCIAL STATUS: (continued)

If a vendor is currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the vendor under federal bankruptcy law or any state insolvency law, the vendor must provide the County with that information as part of its bid/proposal/quote. The County may consider that information during evaluation of the bid/proposal/quote. The County reserves the right to take any action available to it if it discovers a failure to provide such information to the

County is a bid/proposal/quote, including, but not limited to, determination that the vendor should be declared non-responsive and/or non-responsible, and suspension or debarment of the vendor, as those terms are defined in the Maricopa County Procurement Code.

By submitting a bid/proposal/quote in response to this solicitation, the vendor agrees that, if, during the term of any contract it has with the County, it becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the vendor under federal bankruptcy law or any state insolvency law, the vendor will immediately provide the County with a written notice to that effect, and will provide the County with any relevant information it requests to determine whether the vendor will meet its obligations to the County.

3.8 AMENDMENTS:

All amendments to this contract must be in writing and signed by both parties.

3.9 CONTRACT COMPLIANCE MONITORING:

The Materials Management Department and Risk Management Department shall monitor the Contractors compliance with, and performance under, the terms and conditions of the Contract. The Contractor shall make available for inspection and/or copying by the County all records and accounts relating to the work performed or the services provided in this Contract.

3.10 CONFORMATION WITH THE LAW:

This service shall be accomplished in conformity with the laws, ordinances, rules, regulations and zoning restrictions of the United States of America, the State of Arizona, County of Maricopa, and the City of Phoenix.

3.0 ADMINISTRATIVE INFORMATION: (Continued)

3.11 NON-DISCRIMINATION:

The Contractor in the performance of this contract will not discriminate against any employee for employment based on race, religion, sex, national origin or disability.

3.12 COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) REQUIRED:

Contractor understands and acknowledges the applicability of the IRCA. Contractor agrees to comply with the IRCA in performing under this Agreement and to permit County inspection of personnel records to verify such compliance.

3.13 FACILITIES:

During the course of this Agreement, the County shall provide the Contractor's personnel with adequate work space for consultants and such other related facilities as may be required by Contractor to carry out its obligation enumerated herein.

3.14 CONTRACT REPRESENTATIVES:

Any changes in the method or nature of work to be performed under this Agreement must be processed by the County through the Contractor's Contracts Manager. Upon the execution of this Agreement, the County will name its representative who will be legally authorized to obligate the County under this Agreement.

3.15 REFERENCES:

Vendors must provide at least five (5) reference accounts to whom they are presently providing this service. Included must be name of government or company, individual to contact, phone number and address. Preference in awarding this Contract may be given to Contractors furnishing government accounts similar in size to Maricopa County.

3.16 BID PROTESTS AND DISPUTE RESOLUTION:

Bid protests and contract disputes shall be handled in accordance with the provisions of Article 9, MC1-905, MC1-906, respectively, of the Maricopa County Procurement Code.

3.17 INCURRING COSTS:

Maricopa County is not responsible for any costs incurred in preparing this bid, including the acquisition of supplies and/or personnel until a contract is awarded by the Maricopa County Board of Supervisors.

3.18 PROPRIETARY INFORMATION:

Proprietary information submitted by a vendor for this bid shall remain confidential as permitted by law or regulation.

3.19 PUBLIC RECORD:

All information submitted relating to this bid, except for proprietary information, shall become part of the public record.

3.20 CONFORMANCE TO THE MARICOPA COUNTY PROCUREMENT CODE:

If any bidder believes that any aspect of this solicitation is inequitable or impracticable of performance, they will proceed in accordance with the Maricopa County Procurement Code, Section MC1-905, to secure an administrative determination on this point.

3.0 ADMINISTRATIVE INFORMATION: (Continued)**3.21 REJECTION OF PROPOSALS:**

Maricopa County reserves the right to reject any, and all, proposals received in response to this proposal as determined to be in the best interests of the County.

3.22 VENDOR WITHDRAWAL:

If, at any time prior to the opening of this proposal a vendor decides to withdraw its proposal, that vendor shall give written notice to the Materials Management Director, 320 West Lincoln, Phoenix, Arizona 85003.

3.23 MBE/WBE PARTICIPATION:

Vendors submitting proposals are encouraged to solicit MBE/WBE participation on this contract. A list of certified MBE/WBE enterprises may be obtained by contacting Carlos Avelar, Contracts Compliance Coordinator for Maricopa County at (602) 506-8656. Please indicate in your bid response MBE/WBE areas of involvement for monitoring purposes.

3.24 P.O. CANCELLATION LANGUAGE:

The Department of Materials Management reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the vendor but only for actual and documentable costs incurred by the vendor due to and after issuance of the Purchase Order. The County will not reimburse the vendor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc. Vendors agree to accept verbal notification of cancellation from the Department of Materials Management with written notification to follow. By submitting a bid/proposal in response to this solicitation, the vendor specifically acknowledges to be bound by this cancellation policy.

3.25 PROMPT PAYMENT DISCOUNT:

Maricopa County, through its "Continuous Improvement Initiatives" has identified Vendor Payment as a process requiring attention and improvement. Maricopa County has initiated changes in this area which are intended to both improve and expedite this process. In light of these efforts, vendors are strongly encouraged to offer Maricopa County Cash Discounts for Prompt Payment Terms. Invoices reflecting such Cash Discounts will be processed with the highest priority.

3.26 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The Department, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of any and all said materials.

3.27 ADEQUACY OF RECORDS:

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided to eligible clients the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

3.28 AUDIT DISALLOWANCES:

If at any time it is determined by the Department that a cost for which payment has been made is a disallowed cost, the Department shall notify the Contractor in writing of the disallowance and the required course of action, which shall be at the option of the Department either to adjust any future claim submitted by the Contractor by the amount of the disallowance or to require repayment of the disallowed amount by the Contractor forthwith issuing a check payable to Maricopa County.

3.0 ADMINISTRATIVE INFORMATION: (Continued)**3.29 CONTRACT ADMINISTRATION:**

To help insure contract compliance, a contract administration process will be an integral part of this contract. County employees will be assigned as contract monitors for key locations throughout the County. Materials Management, Facilities Management and the user organizations will utilize the procedure. The successful bidder will be made aware of the findings from the process and participate in the post award meeting. This contract administration process is an audit and feedback system and will be in addition to any of the other policies and procedures contained herein. The Contract Administration Process is a total quality management tool that empowers the hands-on users to monitor and assure contract compliance. The vendors should know in the bidding process that the successful bidder will be closely monitored for contract compliance. No additional cost is anticipated to be incurred by the successful bidder by the presence of the contract administration process as long as contract compliance is maintained. Except for the more formalized feedback of findings, the normal vendor/user relationship will exist when within compliance and the contract administration process should be transparent.

3.30 REGISTRATION:

Vendors are required to be registered with Maricopa County prior to receiving an award for any County Business. Failure to comply with this requirement will cause your bid to be declared non-responsive. Registration Forms are available from the Department of Materials Management, 320 West Lincoln Street, Phoenix, Arizona 85003 or by calling (602) 506-3244.

3.31 ADDITIONAL COSTS:

Any vendor who causes the county to incur additional costs to review and verify invoices due to vendor submitting incorrect data. (E.G. Quotes and equipment and software, invoices etc.) will be charged for Maricopa County's costs to review and correct such erroneous billings.

3.32 PROCUREMENT AUTHORITY:

The Maricopa County Procurement Code ("The Code") governs this procurement and is incorporated by this reference. Any protests concerning this request for proposals must be filed with the Procurement Officer in accordance with Section MCI-905 of the Code.

4.0 TERMS AND CONDITIONS:**4.1 LANGUAGE FOR REQUIREMENTS CONTRACTS:**

Vendors signify their understanding and agreement by signing this document, that the contract resulting from this proposal will be a requirements contract. However, this contract does not guarantee that any purchases will be made. It only indicates that if purchases are made for the services contained in this contract, that they will be purchased from the vendor awarded that item. Orders will only be placed when a need is identified by a using agency or department and proper authorization and documentation have been approved.

4.2 CONTRACT LENGTH:

This Request for Proposals is for awarding a firm fixed price contract to cover a one year period.

4.3 OPTION TO EXTEND:

The County may, at their option and with the approval of the Contractor, extend the period of this agreement up to a maximum of four (4), one (1) year options. The Contractor shall be notified in writing by the Materials Management Department of the County's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period.

4.0 TERMS AND CONDITIONS: (Continued)**4.4 ESCALATION:**

Any requests for price adjustments must be submitted thirty (30) days prior to the Contract renewal date. Justification for the requested adjustment in cost of labor and/or materials must be accompanied by appropriate documentation. Escalation shall not exceed the increase in the U.S. Department of Labor (Bureau of Labor Statistics) Consumer Price Index for Urban Consumers. Increases shall be approved in writing by the Materials Management Department prior to any adjusted invoicing submitted for payment.

4.5 INCORPORATION OF PROPOSAL INTO THE CONTRACT:

The contents of this proposal and the selected firm's response is to be incorporated, in total, into the contract.

4.6 UNCONDITIONAL TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the resultant agreement for convenience by providing sixty (60) calendar days advance notice to the vendor.

4.7 DEFAULT:

The County may suspend, terminate, or modify this contract immediately upon written notice to the Contractor in the event of a nonperformance of stated objectives or other material breach of contractual obligations; or upon the happening of any event which would jeopardize the ability of the Contractor to perform any of its contractual obligations. Maricopa County reserves the right to have service provided by other than the Contractor if the Contractor is unable or fails to provide requested service within the specified time frame.

4.8 TERMINATION BY THE COUNTY:

If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate this Agreement. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of, a substantial violation of any provision of this Agreement, then the County may terminate this Agreement. Prior to termination of this Agreement, the County shall give the Contractor fifteen (15) calendar days written notice. Upon receipt of such termination notice, the Contractor shall be allowed fifteen (15) calendar days to cure such deficiencies.

4.9 APPROPRIATION CONTINGENCY:

The vendor recognized that any agreement entered into shall commence upon the day first provided and continued in full force and effect until termination in accordance with its provisions. The vendor and the County herein recognized that the continuation of any contract after the close of any given fiscal year of the County which fiscal years end on June 30 of each year, shall be subject to the approval of the budget of the County providing for or covering such contract item as an expenditure therein. The County does not represent that said budget item will be actually adopted, said determination being the determination of the County Board of Supervisors at the time of the adoption of the budget.

4.10 FAILURE TO PROVIDE SERVICES:

Maricopa County reserves the right to have service provided by other than the Contractor if the Contractor is unable or fails to provide requested service within the specified time frame.

4.0 TERMS AND CONDITIONS: (Continued)

4.11 ORGANIZATION - EMPLOYMENT DISCLAIMER:

The agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the agreement.

The parties agree that no persons supplied by the Contractor(s) in the performance of obligations under the agreement are considered to be County employees, and that no rights of County civil service, retirement or personnel rules accrue to such persons. The Contractor(s) shall have total responsibility for all salaries, wages, bonuses, retirement withholdings, workmen's compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the County harmless with respect thereto.

4.12 INDEMNIFICATION:

To the fullest extent permitted by law, the Trustee shall defend, indemnify and hold harmless the County, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Trustee, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend hold harmless and indemnify the County, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work to services in the performance of this Contract including any employee of the Trustee or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or service the Trustee may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

4.13 INSURANCE REQUIREMENTS:

General Clauses. The Contractor, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed, with a current A.M. Best, Inc. Rating of B++6, or approved unlicensed by the State of Arizona Department of Insurance.

Additional Insured. The insurance coverage, except Workers' Compensation and Professional Liability, required by this Contract, shall name the County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the County, constitute a material breach of this Contract.

Primary Coverage. The Contractor's insurance shall be primary insurance as respects the County, and any insurance or self insurance maintained by the County shall not contribute to it.

Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policies to protect the County.

Waiver. The policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the County, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's work or service.

Deductible/Retention. The policies may provide coverage which contain deductibles or self insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to the County under such policies. The Contractor shall be solely responsible for the deductible and/or self insured retention.

4.0 TERMS AND CONDITIONS: (Continued)

4.13 INSURANCE REQUIREMENTS: (continued)

Copies of Policies. The County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the above policies and/or endorsements. The County shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the County's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

Commercial General Liability. Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$1,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract which Coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc. Additional Insured, Form B, CG 20101185.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

Automobile Liability. Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

Workers' Compensation. The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required of the Contractor.

Professional Liability. The Contractor retained by the County to provide the work or service required by this Contract will maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Contractor or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.

4.14 CERTIFICATES OF INSURANCE:

Prior to commencing work or services under this Contract, Contractor shall furnish the County with Certificates of Insurance, or formal endorsements as required by the contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the work or services and as evidenced by annual Certificates of Insurance.

4.15 CANCELLATION AND EXPIRATION NOTICE:

Insurance evidenced by this Certificate shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the County. If a policy does expire during the life of the contract, a renewal Certificate must be sent to the County fifteen (15) days prior to the expiration date.

All Certificates of Insurance required by this Contract shall be identified with a bid serial number and title. A \$25.00 administrative fee shall be assessed for all Certificates received without the appropriate bid serial number and title.

4.0 TERMS AND CONDITIONS: (Continued)**4.16 CHANGES:**

The County may require changes in the scope of the services to be performed by the Contractor hereunder. All such changes, which are mutually agreed upon by and between all the parties, shall be incorporated in written amendments to this Agreement. All such amendments shall state any increase or decrease in the amount of the compensation due to the Contractor for the change in scope.

4.17 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete services to this contract. Should a service requirement be deleted, payment to the Contractor will be reduced proportionally, to the amount of service reduced in accordance with the bid price. Should additional services be required from this contract, prices for such additions will be negotiated between the Vendor and the County.

4.18 SEVERABILITY:

Any provision of this contract which is determined to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and remaining provisions shall remain in full force and effect.

4.19 VALIDITY:

The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

4.20 CONTRACTOR RESPONSIBILITY:

The Contractor will be responsible for any damages whatsoever to County property as applicable when such property is the responsibility or in the custody of the Contractor, his employees or subcontractors.

Contractor agrees that all subcontractors performing work under this agreement shall comply with its provisions and it is expressly understood that all persons employed by the Contractor, either directly or indirectly, shall be considered employees of the Contractor, and not employees of Maricopa County.

Contractor acknowledges and agrees that it is liable and responsible for any act or omission by the Contractor, its employees, agents, officers, representatives, and subcontractors occurring in the course of Contractor's performance of this Contract, whether such act or omission occurs on County property or elsewhere. Contractor shall be liable for any loss or damage arising out of or related to Contractor's performance of this contract, Contractor shall bear the above stated liability, even in absence of its own negligence, unless County actions caused the loss or damage (i.e., if regulation, but damage occurs, Contractor is responsible for such damages.) Contractor shall bear the above stated liability, consequential, incidental, direct, and indirect damages, and shall be liable for all costs, including attorney's fees, incurred by the County to enforce this provision.

4.21 ASSIGNMENT OR SUBCONTRACTING:

Neither this Agreement, nor any portion thereof, may be assigned by Contractor without the written consent of the County first having been obtained. Any attempt by the Contractor to assign or subcontract any performance of this Agreement without the written consent of the County shall be null and void and shall constitute a breach of this Agreement.

The subcontractor's rate for the job shall not exceed that of the prime contractor's rate, as bid in the pricing section, unless the prime contractor is willing to absorb any higher rates. The subcontractor's invoice shall be invoiced directly to the prime contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the subcontractor's invoice must accompany the prime contractor's invoice.

4.13 INSURANCE REQUIREMENTS: (continued)

4.22 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.23 SECURITY AND PRIVACY:

The Contractor agrees that none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. The County shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

The Contractor shall incorporate the foregoing provisions of this paragraph in all of its authorized subcontracts.

4.24 CONTRACTOR LICENSE REQUIREMENT:

The Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of his business. He shall keep himself fully informed of existing and future Federal, State, and Local laws, ordinances and regulations which in any manner affect the fulfillment of this contract and shall comply with the same.

4.25 DELIVERY:

It shall be the bidder's responsibility to meet the County's delivery requirements, as called for in the Technical Specifications. Maricopa County reserves the right to obtain material on the open market in the event the bidder fails to make delivery and any price differential will be charged against the Contractor.

4.26 OFFSET FOR DAMAGES:

In addition to all other remedies at Law or Equity, the County may offset from any money due to the bidder any amounts bidder owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.27 PRICE REDUCTIONS:

By submitting a bid or proposal in response to this solicitation, vendors agree to guarantee that Maricopa County is receiving the lowest price offered by your company to other customers for similar services at comparable volumes in a similar geographic area. If at any time during the contract period your company offers a lower price to another customer, notification not be made of price reductions, upon discovery Maricopa County shall reserve the right to take any or all of the following actions:

4.27.1 Cancel the contract, if it is currently in effect.

4.27.2 Determine the amount, which the County was overcharged and submit a request for payment from the vendor for that amount.

4.27.3 Take the necessary steps to collect any performance surety provided on the applicable contract.

5.0 INSTRUCTIONS FOR PROPOSAL:

5.1 INSTRUCTIONS FOR PREPARING AND SUBMITTING PROPOSALS:

Proposers are to provide one (1) original (labeled) five (5) copies of their proposal. **Proposers are to address proposals identified with serial number, title and return address to Maricopa County, Department of Materials Management, Serial 98136-RFP, 320 West Lincoln, Phoenix, Arizona 85003.** Proposals must be signed by a corporate official who has been authorized to make such commitments. Instructions to Proposers, Paragraph 1, is modified to read: All prices shall be held firm for a period of one hundred twenty (120) days after the RFP closing date.

5.2 EXCEPTIONS TO THE BID SOLICITATION:

The Contractor will identify and list all exceptions taken to all sections of 98136-RFP and list these exceptions referencing the section (paragraph) where the exception exists and then identify the exceptions and the proposed wording for the contractors exception. The Contractor will list these exceptions in the Best and Final Proposal under the heading "Exception to the Bid Solicitation, BS98136-RFP". Exceptions that surface elsewhere and that do not also appear under the heading "Exception to the Bid Solicitation, BS98136-RFP", shall be considered invalid and void and of no contractual significance.

The County reserves the right to reject, render the proposal non-responsive, enter into negotiation on any of the contractor exceptions, or accept them outright.

5.3 GENERAL:

The Proposal submitted should be specific and complete in every detail. It should be practical and should be prepared simply and economically, providing a straight forward, concise delineation of capabilities to satisfactorily perform the contract being sought.

The vendor should not necessarily limit the proposal to the performance of the services in accordance with this document but should outline any additional services and their costs if the vendor deems them necessary to accomplish the program.

5.4 FORMAT AND CONTENT:

To aid in the evaluation, it is desired that all proposals follow the same general format. The proposals are to be submitted in binders and have sections tabbed as below :

5.4.1 Letter of Transmittal (Attachment A)

5.4.2 Registration Sheet (Attachment B)

5.4.3 Table of Contents

5.4.4 Short introduction and summary - This section shall contain an outline of the general approach utilized in the proposal.

5.4.5 Proposal - Your proposal should contain a statement of all the programs and services proposed including conclusions and generalized recommendations. Proposals should be all inclusive detailing your best offer. Additional related services should be incorporated into the proposal if applicable.

5.4.6 Personal Qualifications - Support personnel, as applicable, shall be listed including a description of assignments and responsibilities, a resume of professional experience and an estimate of the time each would devote to this program, and other pertinent information.

5.4.7 Other data

5.4.8 Pricing

5.4.9 Proposal exceptions

5.4.10 References (Attachment C)

6.0 EVALUATION FACTORS:**6.1 GENERAL:**

The following guidelines will be used in analyzing and evaluating this proposal. Although price will be a factor in proposal evaluation, it is specifically a consideration of secondary importance to the needs identified in the proposal. The County reserves the right to accept other than the lowest price proposal.

Proposals will be evaluated by a committee composed of various Maricopa County departments and others. Requests for presentations or clarification of portions of the proposals may be considered. A summary evaluation will be prepared by this committee with an objective ranking of the proposals.

6.0 EVALUATION FACTORS: (continue)

6.2 AWARD OF CONTRACT:

Contracts awarded pursuant to the provisions of this section will not be solely on price, but will include and be limited to evaluation criteria listed in the proposal. The contract will be awarded by the Board of Supervisors to a qualified firm at compensation determined to be fair and reasonable considering budgetary limitations, scope, complexity and the nature of goods and/or services. The proposal may be awarded in whole, by section, or geographic area as required.

6.3 COMPETITIVE NEGOTIATION:

Proposals should follow format per paragraph 5.4. At the County's option, proposing firms may be invited to make presentations to the Evaluation Committee. Negotiations may be conducted, as needed, with the highest rated proposer.

6.4 BASIC EVALUATION PROCEDURE:

- Step 1 Review of all Proposals to conformance of this RFP.
- Step 2 The elimination of all proposals which deviate substantially from the basic intent of the proposal.
- Step 3 An assessment of the remaining proposers. This assessment will also include a review of the vendor personnel capability and the previous experience of each vendor.
- Step 4 Verification of vendor references.
- Step 5 Oral presentations to supplement the proposal, for the purpose of clarification, may be required of selected vendors. The time and place for oral presentations will be announced at a later date, if such a presentation is required.
- Step 6 Evaluation of costs to Maricopa County.
- Step 7 Capability of the vendor to participate in this particular program, including eligibility based on the vendor's financial stability and viability.
- Step 8 Tabulation and recommendation of potential vendor.

6.5 EVALUATION OF PROPOSAL: SELECTION FACTORS

A proposal analysis committee shall be appointed, chaired by the Materials Management Department to evaluate each proposal and prepare a scoring of each proposal to the responses as solicited in the original request:

- 6.5.1 Proven skills and technical competence.
- 6.5.2 Approach and philosophy.
- 6.5.3 Credentials of management staff.
- 6.5.4 Quality and completeness of proposal.
- 6.5.5 Cost of goods, services and/or materials and allocation of man hours.
- 6.5.6 Experience in governmental and/or industrial activities.

LL/slt

cc: Les Boyce, Risk Management

7.0 PRICING:

B0603371

As previously discussed, the County is required to obtain an opinion and review to determine if the County has any "available amounts", as defined in Section 1.148-6(d)(3)(iii) of the Treasury Regulations.

First Southwest agrees to provide such review and opinion for an annual fee of \$500. This fee is in addition to any fee charged to compute the arbitrage rebate liability amount related to the above captioned bond issue.

First Southwest does not charge hourly or escalating fees for any of the services provided to clients. Our fees are a firm, fixed annual price per issue for all of the services outlined in this proposal. Our standard fees range from \$1,800 - \$4,000 annually per issue, depending upon the complexity of the issue's structure.

First Southwest's standard fee structure is based upon the following, and includes current and future bond issues:

Description	Annual Fees Per Computation Year (*)
Base Fee Per Computation Year	\$1,800
<i>Adjustments to Base Fee:</i>	
Debt Service Reserve Funds	500
Commingled Fund Allocations	500
Transferred Proceed Calculations	500
Debt Service Fund Residual Calculations (Excess Tax Collections)	500
Yield Restriction Analysis/Yield Reduction Calculation	500
Variable/Floating Rate Bond Issue	1,000
Commercial Paper: Per allocated issue to perform arbitrage rebate computation	4,000
Penalty Calculations: Semiannual fee for each issue of Bonds, regardless of issue size.	1,000

- (*) A "Computation Year" represents a one year period from the delivery date of the issue to the date that is one year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one "computation year," the annual fee is multiplied by the number of computation years contained in the calculation being performed. For example, if the first calculation performed for an issue covers three computation years (e.g., 1993-1996), the fee for that calculation would be three times the annual fees stated above.

EXPLANATION OF ADJUSTMENTS TO THE BASE FEE

1. Debt Service Reserve Funds. The authorizing documents for many revenue bond issues require that a separate fund be established (the "reserve fund") into which either bond proceeds or revenues are deposited in an amount equal to some designated level, such as average annual debt service on all parity bonds. This reserve fund is established for the benefit of the bondholders as additional security for payment on the debt. In most instances, the balance in the reserve fund remains stable throughout the life of the bond issue. Reserve funds, whether funded with bond proceeds or revenues, are subject to the rebate requirement and must be included in any calculations of rebate. The base fee is increased by \$500 to reflect the additional computation requirements associated with a reserve fund. The total fees associated with an issue that has only a reserve fund subject to rebate (i.e., other funds expended) will be reduced as described later in this section.

7.0 PRICING: (Continued)**EXPLANATION OF ADJUSTMENTS TO THE BASE FEE (continued)**

2. **Commingled Fund Allocations.** By definition, a commingled fund means that the proceeds of any particular bond issue have been deposited in a fund that contains amounts that are not part of that bond issue. It is common for issuers to commingle bond proceeds with either operating revenues or other bond proceeds. The arbitrage regulations, while permitting the commingling of funds, require that bond proceeds be "carved-out" for purposes of calculating rebate. Interest must be allocated to the portion of the commingled fund that represents bond proceeds of the issue in question. The base fee for each issue subject to the rebate requirement that is invested in the commingled fund is increased by \$500 to compensate for the task of allocating the commingled fund as required by the arbitrage regulations.

When comparing First Southwest's fee structure to other competitors, issuers should carefully analyze the treatment of commingled funds. Many firms charge an hourly rate to "uncommingle" funds versus the fixed fee charged under our structure. It is not uncommon for the process of uncommingling and allocating commingled funds to take several days to complete. Since many firms charge hourly rates well in excess of \$100 per hour, this approach to commingled funds can increase the total fees paid by the issuer by several thousand dollars per issue. We believe our fee structure eliminates the ability of a calculation firm to significantly increase fees after they are engaged by spending considerable time "uncommingling" funds.

3. **Transferred Proceed Calculations.** When a bond issue is refinanced (refunded) by another issue, special calculations referred to; as transferred proceeds calculations may have to be performed. Under the regulations, when proceeds of a refunding issue are used to pay principal on a prior issue, a prorate portion of the refunded bond proceeds are treated as "transferred" to the refunding issue. Although no funds are physically transferred from one issue to another, it is often necessary to perform these paper calculations for rebate purposes. In the event transferred proceeds calculations are required, a \$500 additional charge is applied to the base fee.
4. **Debt Service Fund Residual Calculations.** Because tax rates are established using an estimated collection percentage, it is not uncommon for the balance in the debt service fund (often referred to as the Interest & Sinking Fund) to exceed the amount necessary to pay the current year's debt service requirements. When the Tax Reform Act of 1986 was passed, Congress instructed that excess amounts in a debt service fund be treated as a "reserve fund," thereby subjecting the excess balance to the rebate requirements. To the extent that any amounts deposited in the debt service fund remain for more than thirteen months on a first-in, first-out basis, that excess is classified as a "reserve fund portion" until used for payment of debt service. In most instances, the "No-Arbitrage Certificate" related to the issue will describe the rebate requirements associated with the debt service fund. Should calculations be required to determine the debt service fund residual balance and to allocate that balance to all applicable issues, an additional charge of \$500 per issue is added to the base fee charge.
5. **Yield Restriction Reduction Calculation.** The Internal Revenue Code provides that, in general, gross proceeds of a bond issue may not be invested at a yield in excess of the bond yield.

However, several exceptions to the general rule are provided which allow, in certain circumstances, the investment bond proceeds at an uninvested yield for a temporary period of time. Failure to adhere to these provisions may *declare* an issue and an arbitrage bond, which could cause the issue to be declared taxable. The 1993 Treasury Regulations provide an alternative to the yield restriction of proceeds after the applicable temporary period. Yield reduction payments may be calculated and paid in the same manner as a rebate payment, in order to avoid the bonds as being declared arbitrage bonds. First Southwest will provide the necessary analysis to determine if proceeds have reached the end of the temporary period and must be yield restricted or perform the calculation to determine the yield reduction payment to be made.

An additional charge of \$500 will be added for this analysis and computation.

6. **Variable/Floating Rate Bond Issues.** Additional time is required to perform the arbitrage rebate calculations for variable rate bonds. A bond is a variable rate bond if the interest rate paid on the bond is dependent upon an index, which changes subsequent to the issuance of the bonds. The computational requirements of a variable rate issue are more complex than those of a fixed rate issue and, accordingly, require significantly more time to calculate. For example, it is necessary to evaluate both a five-year yield as well as one-year yield increments to determine which yield is most beneficial to the issuer. Due to the additional complexity related to variable/floating rate bond issues, the base fee is increased by \$1,000 for any issue to which this applies.

Recognizing that computational complexities are reduced when all or the majority of the gross proceeds of an issue are expended, it is First Southwest's policy to reduce fees as appropriate:

7.0 PRICING: (Continued)

Per issue fees will be reduced to the following computation year levels:

Proceeds expended. Liability updated but no report issued.	\$200
Proceeds expended. Liability updated and report issued.	500
Reserve Fund only fund requiring a calculation.	1,000
Escrow Fund only fund requiring a calculation	1,000
Debt Service Residual Test only	1,000
Rebate Fund only fund requiring a calculation.	500
Preparation of IRS reporting package.	500
Yield Restriction/Yield Reduction Computation only	1,800

Policies Regarding Fees. The services we provide include all procedures necessary to compute and document compliance with the arbitrage rebate requirements. Because we believe that a comprehensive approach to compliance is necessary, First Southwest does not segregate the cost of our service on a piecemeal or hourly basis. The fees we charge encompass all aspects of compliance. First Southwest has attempted to establish a fee structure, which provides for affordable arbitrage rebate compliance. Accordingly, the following policies apply to the fees we have quoted:

- Ÿ *Issues Complying with an Exception Under the Regulations:* If no computation is required to determine that an issue complies with an exemption provision in the arbitrage regulations, the issuer will not be billed for the standard fee on that particular issue (i.e., if the gross proceeds of an issue are expended within the six month allowable temporary period). If computations are required to determine that an exception is satisfied, the per issue fee will be charged for each computation year associated with the exception (e.g., two computation year fee charges to verify the 24-month spending exception).
- Ÿ *Partial Year Computations:* If only a partial year computation is required on any issue subject to work under this contract, our annual fee is prorated to reflect the shorter period. For these clients, we perform a partial period computation from the delivery date of the bonds through the end of the first fiscal year, and at the end of five years, another partial period computation from the date of the last fiscal year-end to the required filing date. The same policy applies to periods greater than one computation year.
- Ÿ *Revisions Resulting from Issuance of Additional Regulations:* Periodically the Treasury Department issues revised arbitrage rebate regulations which may require that the computations be adjusted to conform to new guidelines. We will include the updating of previously issued reports at no additional expense.

TERMS: NET 30

FEDERAL TAX ID NUMBER: ~~75-0708002~~ **75-2397709**

TELEPHONE NUMBER: ~~1-800-678-3792~~ **(214) 953-4036**

FAX NUMBER: (241) 953-4111

CONTACT PERSON: ~~RANDEE R. WILSON~~ **JOSIE ZUNIGA**

VENDOR NUMBER: ~~750708002~~ **752397709**

CONTRACT PERIOD: TO COVER PERIOD ENDING **NOVEMBER 30, 1999 2000 2001 2003**